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Arizona Corporation Commission  
**BEFORE THE ARIZONA CORPORATION COMMISSION**  
**DOCKETED**

NOV 20 2002

WILLIAM A. MUNDELL  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER

DOCKETED BY

DOCKET NO. T-04023A-01-0451

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DECISION NO. \_\_\_\_\_

IN THE MATTER OF THE APPLICATION OF  
RURALWEST – WESTERN RURAL  
BROADBAND, INC. FOR A CERTIFICATE OF  
CONVENIENCE AND NECESSITY TO PROVIDE  
LOCAL COMPETITIVE SERVICES AND  
PETITION FOR COMPETITIVE  
CLASSIFICATION OF PROPOSED SERVICES  
WITHIN THE STATE OF ARIZONA.

**OPINION AND ORDER**

DATE OF HEARING: September 19, 2002  
PLACE OF HEARING: Phoenix, Arizona  
ADMINISTRATIVE LAW JUDGE: Philip J. Dion III  
APPEARANCES: James Hirschy, President/CEO, Rural West – Western Rural Broadband  
Maureen A. Scott, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

**BY THE COMMISSION:**

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission (“Commission”) finds, concludes, and orders that:

**FINDINGS OF FACT**

1. On June 2, 2001, Rural West – Western Rural Broadband, Inc. (“Rural West” or “Applicant”) filed with the Commission an application for a Certificate of Convenience and Necessity (“Certificate”) to provide competitive facilities-based and resold local exchange, and facilities-based and resold interexchange telecommunications services statewide.
2. On August 29, 2001, Applicant docketed a Notice of Filing of Affidavits of Publication that comply with Commission rules.
3. Rural West is an Arizona “S” corporation, authorized to do business in Arizona.
4. On April 5, 2002, the Commission’s Utilities Division Staff (“Staff”) filed its Staff

1 Report, which recommended approval of the application and included a number of additional  
2 recommendations.

3 5. On June 7, 2002, a Procedural Order was issued setting this matter for hearing on  
4 September 19, 2002 and setting various procedural deadlines.

5 6. On September 19, 2002, a full public hearing in this matter was held as scheduled.

6 7. Applicant has the technical capability to provide the services that are proposed in its  
7 application.

8 8. Currently there are several incumbent providers of local exchange and interexchange  
9 services in the service territory requested by Applicant, and numerous other entities have been  
10 authorized to provide competitive local and interexchange services in all or portions of that territory.

11 9. It is appropriate to classify all of Applicant's authorized services as competitive.

12 10. The Staff Report stated that Applicant has no market power and the reasonableness of  
13 its rates would be evaluated in a market with numerous competitors.

14 11. According to Staff, Rural West submitted the unaudited financial statement for the  
15 month ending March 31, 2002. These financial statements list assets of \$116,459, equity of \$97,031  
16 and net income of \$1,441.

17 12. The Application states that Rural West collects advances and deposits from its  
18 customers.

19 13. Staff recommends that Rural West's application for a Certificate to provide  
20 competitive facilities-based and resold local exchange and facilities-based and resold interexchange  
21 telecommunications services be granted subject to the following conditions:

22 (a) that, unless it provides services solely through the use of its own facilities,  
23 Rural West be ordered to procure an Interconnection Agreement, within 365  
24 days of the effective date of the Order in this matter or 30 days prior to the  
25 provision of service, whichever comes first, that must remain in effect until  
further order of the Commission, before being allowed to offer local exchange  
service;

26 (b) that Rural West be ordered to file with the Commission, within 365 days of the  
27 effective date of the Order in this matter or 30 days prior to the provision of  
28 service, whichever comes first, its plan to have its customers' telephone  
numbers included in the incumbent's Directories and Directory Assistance  
databases;

- 1 (c) that Rural West be ordered to pursue permanent number portability  
2 arrangements with other LECs pursuant to Commission rules, federal laws and  
3 federal rules;
- 4 (d) that Rural West be ordered to abide by and participate in the AUSF mechanism  
5 instituted in Decision No. 59623, dated April 24, 1996 (Docket No. RT-T-  
6 03905A-00-0513E-95-0498);
- 7 (e) that Rural West be ordered to abide by the quality of service standards that  
8 were approved by the Commission for USWC in Docket No. T-0151B-93-  
9 0183;
- 10 (f) that in areas where it is the sole provider of local exchange service facilities,  
11 Rural West be ordered to provide customers with access to alternative  
12 providers of service pursuant to the provisions of Commission rules, federal  
13 laws and federal rules;
- 14 (g) that Rural West be ordered to certify, through the 911 service provider in the  
15 area in which it intends to provide service, that all issues associated with the  
16 provision of 911 service have been resolved with the emergency service  
17 providers within 365 days of an Order in this matter or 30 days prior to the  
18 provision of service, whichever comes first, which certification must remain in  
19 effect until further Order of the Commission;
- 20 (h) that Rural West be ordered to abide by all the Commission decisions and  
21 policies regarding CLASS services;
- 22 (i) that Rural West be ordered to provide 2-PIC equal access;
- 23 (j) that Rural West be required to notify the Commission immediately upon  
24 changes to its address or telephone number;
- 25 (k) that Rural West be ordered to comply with all Commission rules, orders, and  
26 other requirements relevant to the provision of intrastate telecommunications  
27 service;
- 28 (l) that Rural West be ordered to maintain its accounts and records as required by  
the Commission;
- (m) that Rural West be ordered to file with the Commission all financial and other  
reports that the Commission may require, and in a form and at such times as  
the Commission may designate;
- (n) that Rural West be ordered to maintain on file with the Commission all current  
tariffs and rates, and any service standards that the Commission may require;
- (o) that Rural West be ordered to cooperate with Commission investigations of  
customer complaints;
- (p) Rural West be ordered to participate in and contribute to a universal service  
fund, as required by the Commission; and
- (q) that Rural West be subject to the Commission's rules governing  
interconnection and unbundling in 1996 Telecommunications Act and the rules  
promulgated thereunder. In the event that Applicant provides essential  
services or facilities that potential competitors need in order to provide their

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services, the Applicant should be required to offer those facilities or services to those providers on non-discriminatory terms and conditions pursuant to Federal Laws, Federal Rules, and State Rules.

15. Staff further recommended that Rural West's application for a CC&N to provide intrastate telecommunications services should be granted subject to the following conditions:

- (a) Rural West be ordered to file conforming tariffs within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever occurs first, and in accordance with the Decision;
- (b) In order to protect Rural West's customers:
  - (1) Rural West should be ordered to procure a performance bond equal to \$235,000. The minimum bond amount of \$235,000 should be increased if at any time it would be insufficient to cover prepayments or deposits collected from Rural West's customers. The bond amount should be increased in increments of \$117,500 whenever the total amount of the advances, deposits and prepayments is within \$23,500 of the bond amount;
  - (2) if Rural West desires to discontinue service, it should be required to file an application with the Commission pursuant to A.A.C. R14-2-1107;
  - (3) Rural West should be required to notify each of its local exchange customers and the Commission 60 days prior to filing an application to discontinue service pursuant to A.A.C. R14-2-1107; and any failure to do so should result in forfeiture of the Applicant's performance bond;
  - (4) Rural West should docket proof of the performance bond within 365 days of the effective date of an Order in this matter or 30 days prior to the provision of service, whichever comes first, and must remain in effect until further Order of the Commission;
  - (5) if, at some time in the future, Rural West does not collect from its customers an advance, deposit and/or prepayments, Staff recommends that Rural West be allowed to file a request for cancellation of the resold long distance portion of its established performance bond. Such request should be filed with the Commission for Staff review. Upon receipt of such filing and after Staff review, Staff will forward its recommendation to the Commission; and
- (c) If any of the above timeframes are not met, that Rural West's CC&N should become null and void without further Order of the Commission and no extensions for compliance should be granted.

16. In its Staff Report, Staff stated that based on information obtained from the Applicant, it has determined that Rural West's fair value rate base is de minimus, and is too small to be useful in

1 setting rates. Staff further stated that in general, rates for competitive services are not set according  
2 to rate of return regulation, but are heavily influenced by the market. Staff recommended that the  
3 Commission not set rates for Rural West based on the fair value of its rate base.

4 17. The rates to be ultimately charged by Rural West will be heavily influenced by the  
5 market. Because of the nature of the competitive market and other factors, a fair value analysis is not  
6 necessarily representative of the company's operations.

7 18. Staff stated that Rural West lacks the market power to adversely affect the  
8 telecommunications market by either restricting output or raising prices. Also, Staff has  
9 recommended that Rural West's services be classified as competitive and thus subject to the flexible  
10 pricing authority allowed by the Commission's Competitive Telecommunications Services rules.  
11 Staff believes that these two factors, lack of market power and the competitive marketplace for the  
12 services Rural West proposes to offer, support the conclusion that a fair value analysis is not  
13 necessarily representative of the company's operations, and that the rates charged by Rural West will  
14 be reasonable.

15 19. Staff's recommendations, as set forth herein, are reasonable.

16 20. Rural West's fair value rate base is determined to be zero for purposes of this  
17 proceeding.

### 18 CONCLUSIONS OF LAW

19 1. Applicant is a public service corporation within the meaning of Article XV of the  
20 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

21 2. The Commission has jurisdiction over Applicant and the subject matter of the  
22 application.

23 3. Notice of the application was given in accordance with the law.

24 4. A.R.S. § 40-282 allows a telecommunications company to file an application for a  
25 Certificate to provide competitive telecommunications services.

26 5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised  
27 Statutes, it is in the public interest for Applicant to provide the telecommunications services set forth  
28 in its application.

6. Applicant is a fit and proper entity to receive a Certificate authorizing it to provide competitive facilities-based and resold local exchange and resold interexchange telecommunications services in Arizona as conditioned by Staff's recommendations.

7. The telecommunications services that the Applicant intends to provide are competitive within Arizona.

8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules, it is just and reasonable and in the public interest for Applicant to establish rates and charges that are not less than the Applicant's total service long-run incremental costs of providing the competitive services approved herein.

9. Staff's recommendations, as set forth herein, are reasonable and should be adopted.

10. Rural West's competitive rates, as set forth in its proposed tariffs, are just and reasonable and should be approved.

## ORDER

IT IS THEREFORE ORDERED that the application of Rural West – Western Rural Broadband, Inc. for a Certificate of Convenience and Necessity for authority to provide competitive facilities-based and resold local exchange, and facilities-based and resold interexchange telecommunications services in Arizona shall be, and is hereby, granted, conditioned upon Rural West – Western Rural Broadband, Inc.'s timely compliance with the following three Ordering Paragraphs.

IT IS FURTHER ORDERED that Rural West – Western Rural Broadband, Inc. shall file conforming tariffs in accordance with this Decision within 365 days of this Decision or 30 days prior to providing service, whichever comes first.

IT IS FURTHER ORDERED that Rural West – Western Rural Broadband, Inc. shall procure a performance bond equal to \$235,000 the earlier of 365 days from the effective date of this Order or 30 days prior to the commencement of service. The minimum bond amount of \$235,000 shall be increased if, at any time, it would be insufficient to cover prepayments or deposits collected from the Applicant's customers. The bond amount shall be increased in increments of \$117,500. This increase shall occur when the total amount of the advances, deposits, and prepayments is within

1 \$23,500 of the bond amount.

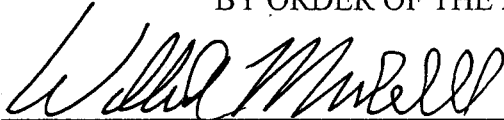
2 IT IS FURTHER ORDERED that Rural West – Western Rural Broadband, Inc. shall comply  
3 with all of the Staff recommendations set forth in the above-stated Findings of Fact and Conclusions  
4 of Law.

5 IT IS FURTHER ORDERED that if Rural West – Western Rural Broadband, Inc. fails to  
6 meet the timeframes outlined in the Ordering Paragraphs above, that the Certificate of Convenience  
7 and Necessity conditionally granted herein shall become null and void without further Order of the  
8 Commission.

9 IT IS FURTHER ORDERED that if Rural West – Western Rural Broadband, Inc. fails to  
10 notify each of its customers and the Commission at least 60 days prior to filing an application to  
11 discontinue service pursuant to A.A.C. R14-2-1107, that in addition to voidance of its Certificate of  
12 Convenience and Necessity, Rural West – Western Rural Broadband, Inc.'s performance bond shall  
13 be forfeited.

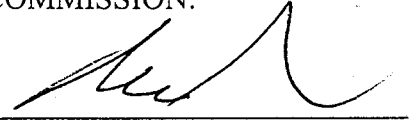
14 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

15 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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17 CHAIRMAN

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19 COMMISSIONER

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21 COMMISSIONER

22 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
23 Secretary of the Arizona Corporation Commission, have  
24 hereunto set my hand and caused the official seal of the  
25 Commission to be affixed at the Capitol, in the City of Phoenix,  
26 this 20th day of November, 2002.

27   
28 BRIAN C. McNEIL  
EXECUTIVE SECRETARY

29 DISSENT \_\_\_\_\_  
30 PJD:mlj

1 SERVICE LIST FOR: Rural West – Western Rural Broadband, Inc.

2 DOCKET NO.: T-04023A-01-0451

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